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AN ORDINANCE AMENDING CHAPTER 8 OF THE DULUTH CITY CODE, 1959, AS AMENDED, REGARDING ALCOHOLIC BEVERAGES.

CITY PROPOSAL:

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That Chapter 8, Sections 8-2 through 8-5, of the Duluth City Code, 1959, as amended, is hereby amended as follows:

Sec. 8-2. Membership; appointment; term of office.

The alcohol, gambling and tobacco commission shall consist of seven members, who shall be appointed by the mayor, subject to the approval of the council. Each member shall be a citizen of the United States and a resident of the city for at least one year immediately preceding his their appointment. Of the persons first appointed for membership on the commission, three shall be appointed for one year, three for two years and one for three years. Thereafter, all appointments shall be for the term of three years, except such appointments as may be made for the remainder of unexpired terms. Members of the commission shall be eligible for reappointment.

Sec. 8-3. Vacancies.

Vacancies on the alcohol, gambling and tobacco commission caused by death, resignation or otherwise shall be filled by the mayor only for the unexpired terms, subject to approval of the city council, in the same manner as for initial appointments. Such vacancies shall be filled by the mayor ~~within 30 days after the occurrence of such vacancies~~. The term of any member of the commission shall be deemed vacant upon such failure to attend three consecutive meetings, unless such nonattendance resulted from a justifiable cause.

Sec. 8-4. Members' oath of office.

Every appointee to the alcohol, gambling and tobacco commission, before he they enters upon the duties of his their office, shall make and file with the city clerk an oath or affirmation to support the constitutions of the United States and of the state and to perform faithfully, honestly and impartially the duties of his their office, as required by Section 28 of the City Charter. Any appointee who shall fail or neglect to make or file such oath or affirmation within ten days after notification of his their appointment shall be deemed to have refused to accept such appointment.

Sec. 8-5. Officers; rules of procedure.

Within ten days after the making and filing of the oath prescribed by this Division, the alcohol, gambling and tobacco commission shall meet and elect a president and a vice president. The city clerk shall be the secretary and keeper of the minutes and records of the commission. All minutes and records of the commission shall be public records, and shall be open to inspection at the office of the city clerk during established business hours of the city. For the conduct of its business, the commission may adopt such rules and regulations as are not inconsistent with this Division.

Section 2. That Chapter 8, Section 8-9, of the Duluth City Code, 1959, as amended, is hereby amended as follows:

Sec. 8-9. Suspension and revocation of licenses; civil penalty; presumptive penalties.

(a) When it comes to the attention of the alcohol, gambling and tobacco commission that any establishment licensed pursuant to this Chapter may have violated the provisions of this Chapter or any other law relating to the operation of a liquor establishment, or that such establishment may be engaging in other conduct that may constitute good cause for the suspension or revocation of its liquor license, the alcohol, gambling and tobacco commission may call for a hearing within 30 days of being made aware of the alleged violation to determine the validity of the allegations and to determine what, if any, disciplinary measures shall be recommended to the city council for their implementation against the licensee;

(1) Any hearing called pursuant to the provisions of this Section shall be held before the alcohol, gambling and tobacco commission and shall be held pursuant to the procedural and evidentiary provisions of Minnesota Statutes, sections 14.57 to 14.69, and rules promulgated thereunder. At such hearing, the commission shall hear all relevant evidence and arguments from all parties. After due deliberation, the commission shall determine the validity of the allegations and what, if any, corrective or punitive measures will be recommended to the city council;

(2) At the completion of the hearing and deliberations, the commission shall direct the city clerk to prepare a report to the city council which shall consist of the commission's findings of fact, conclusions and recommendation to the city council. The report shall be filed with the city council and served personally or by first class mail upon the parties to the hearing. The council shall also receive a copy of the transcript of the commission's hearing and any exhibits introduced as evidence;

(3) The city council shall not render a decision on the matter until at least ten days after it has received the report of the alcohol, gambling and tobacco commission. During this ten day period, either party to the hearing may present written exceptions to the report of the alcohol, gambling and tobacco commission or make arrangements to be placed on the agenda of the city council to present oral argument to the city council concerning the matter;

(4) The city council's decision on the matter shall be in the form of a written resolution which shall contain findings of fact and conclusions on all material issues and shall set forth any punitive action taken against the license. A copy of the resolution shall be served upon the licensee personally or by first class mail;

(b) Without limiting other grounds for suspension or revocation, the following shall be deemed to be good cause for suspension or revocation of a liquor license:

(1) Violation of any law relating to the operation of a liquor establishment, including, but not limited to, state, federal and local laws on liquor, gambling, prostitution, health and fire safety;

(2) The establishment is operated in such a way as to constitute a public nuisance;

(3) The establishment has failed to pay license fees or city or state sales tax or that property taxes on the building have not been paid;

(4) The establishment has failed to file or maintain any insurance or bond required by law;

(5) The establishment is insolvent, bankrupt or otherwise financially unable to continue business;

(6) Refusal to cooperate with the board, fire department, health department, any properly designated officer or employee of the city, or the police in any investigation and the refusal to admit police officers or other properly designated officers of the city into the establishment at any time when people are in the establishment;

(7) Failure to follow the procedures set forth in this Chapter with respect to change of ownership, change of location or changes in serving area of the establishment;

(8) Nonuse of the license;

(9) The filing of a license application containing information or statements known by the applicant to be false;

(10) The failure to follow the procedures applicable to the use of a caterer's permit issued by the state;

(11) The failure to file a timely license renewal or to provide all documentation required to process a license renewal in a timely manner.

(c) The city council may, for the causes enumerated above, revoke a license, suspend a license for up to 60 days, or impose a civil penalty, not to exceed an amount set in accordance with Section 31-8 of this Code for each violation, or any combination of these sanctions. No portion of the payment of a civil penalty or period of suspension may be stayed or excused. All civil penalties are due and payable within 30 days of council action. The council shall determine the dates any suspension shall be served, but in no event may the suspension period commence earlier than ten days after council action. Absent aggravating or mitigating circumstances, the presumptive penalties for violations shall be as follows:

(1) First offense - a civil penalty set in accordance with Section 31-8 of this Code;

(2) Second offense within one year of the occurrence of the first offense - a civil penalty set in accordance with Section 31-8 of this Code and ~~one~~ up to a five day license suspension;

(3) Third offense within two years of the occurrence of the first offense - a civil penalty set in accordance with Section 31-8 of this Code and ~~five~~ up to a ten day license suspension;

(4) Fourth offense within three years of the occurrence of the first offense - a civil penalty set in accordance with Section 31-8 of this Code and ~~30~~ up to a 30 day license suspension;

(5) Fifth offense within four years of the occurrence of the first offense - license revocation;

(d) The city council may request that the alcohol, gambling and tobacco commission conduct a hearing concerning the operation of any establishment licensed pursuant to this Chapter. The commission shall conduct any hearings so requested.

Section 3. That Chapter 8, Section 8-11, of the Duluth City Code, 1959, as amended, is hereby amended as follows:

Sec. 8-11. Duties of ~~administrative assistant~~ Chief Administrative Officer and city attorney.

Subject to the provisions of the City Charter, the alcohol, gambling and tobacco commission may require the ~~administrative assistant~~ chief administrative officer to furnish such information and assistance to

the commission as the commission shall deem necessary in carrying out the provisions of this Division. The city attorney shall be the legal advisor of the commission.

Section 4. That Chapter 8, Sections 8-13 through 8-14, of the Duluth City Code, 1959, as amended, is hereby amended as follows:

Sec. 8-13. Definitions.

For the purposes of this Division, the following words and phrases shall have the meanings respectively ascribed to them by this Section:

(a) ~~Alcoholic beverages. Distilled, fermented, spirituous, vinous, and malt beverages containing .5 percent or more of ethyl alcohol by weight which are potable for consumption by human beings;~~

(b) ~~(a)~~ At retail. Such term means for use or consumption by the purchaser and not for resale;

(c) ~~(b)~~ Bed and breakfast establishment. Any bed and breakfast inn authorized by Section 50-35 of this Code or other residential, owner occupied, historically or architecturally unique, overnight lodging facility that serves meals to its guests and which is authorized or allowed by local law and is found by the alcoholic beverage board to be the functional equivalent of a bed and breakfast inn;

(d) ~~(c)~~ Club. Any corporation duly organized under the laws of the state for civic, fraternal, social or business purposes, or for intellectual improvement, or for the promotion of sports, or a congressionally chartered veterans' organization which shall have more than 50 members and which shall, for more than a year, have owned, hired or leased a building or space in a building of such extent and character as may be suitable and adequate for the reasonable and comfortable accommodation of its members, whose affairs and management are conducted by a board of directors, executive committee or other similar body chosen by the members at a meeting held for that purpose, none of whose members, officers, agents or employees is paid directly or indirectly any compensation by way of profit from the distribution or sale of beverages to the members of the club, or to its guests, beyond the amount of such reasonable salary or wages as may be fixed and voted each year by the directors or other governing body;

(e) ~~(d)~~ Exclusive liquor store. An establishment used exclusively for the sale of intoxicating liquor for consumption off or away from the licensed premises where sold, and the sale of ice, soft drinks and cigarettes;

(f) ~~Fortified Wine. Wine to which brandy, or neutral grape spirits, has been added during or after fermentation resulting in a beverage containing not less than one-half of one percent nor more than 24 percent alcohol by volume for nonindustrial use.~~

(g) ~~Hotel. Any establishment having a resident proprietor or manager, where, in consideration of payment therefor, food and lodging are regularly furnished to transients, which maintains not less than 50 guest rooms with bedding and other suitable and necessary furnishings in each room, which is provided with a suitable lobby, desk and office for the registration of its guests at the main entrance and on the ground floor, which employs an adequate staff to provide suitable and the usual service and which maintains, under the same management and control as the rest of the establishment and has as an integral part thereof, a dining room with appropriate facilities for seating not less than 30 guests at one time and where the general public is, in consideration of payment therefor, served with meals at tables.~~

(h) ~~Intoxicating liquor. Ethyl alcohol and distilled, fermented, spirituous, vinous and malt beverages containing in excess of 3.2 percent of alcohol by weight;~~

(i) ~~Manufacturer. Every person who, by any process of manufacture, fermenting, brewing, distilling, refining, rectifying, blending or by the combination of different materials, prepares or produces intoxicating liquors for sale;~~

(j) ~~Malt liquor. Any beer, ale or other beverage made from malt by fermentation and containing not less than one-half of one percent alcohol by volume;~~

(k) ~~Theater. A building containing an auditorium in which live dramatic, musical, dance or literary performances are regularly presented to holders of tickets purchased for those performances. A theater shall not include an adult entertainment establishment as defined by Section 5-17(b) of this Code;~~

(l) ~~3.2 percent malt liquor. Any malt liquor containing not less than one-half of one percent alcohol by volume nor more than 3.2 percent alcohol by weight;~~

(m) ~~Off sale. The sale of alcoholic beverages in original packages in retail stores for consumption off or~~

away from the premises where sold;

(m) On sale. The sale of alcoholic beverages by the glass, bottle, or can for consumption on the premises only;

(n) Package or original package. Any container or receptacle holding alcoholic beverages, which container or receptacle is corked or sealed;

(o) Public place. Any place that the general public can occupy as a matter of right or any place that is open to the general public by invitation, either for business purposes or otherwise;

(p) Restaurant. Any establishment, other than a hotel, under the control of a single proprietor or manager, classified as a high or medium risk food and beverage service establishment under Minnesota Statutes Chapter 157, having appropriate facilities for the serving of meals and for seating not less than 25 guests at one time and where, in consideration of payment therefor, meals are regularly served at tables to the general public, which employs an adequate staff to provide the usual and suitable service to its guests, and a principal part of the business of which is the serving of foods-, and derives a substantial amount of its income from the sale of foods including non-alcoholic beverages. To determine compliance with this requirement, the licensee shall fulfill/meet the following operational requirements:

(1) Offers a substantial food menu of a type consistent with a full-service, sit-down high or medium risk food and beverage service establishment offering meals to guests. Prepackaged and reheatable food items shall not be considered meals for this purpose;

(2) Offers full menu service during all hours of operation except two (2) hours prior to closing of the restaurant. Beginning at 10:00 p.m. and until midnight, a reduced, late night food menu is allowed;

(3) Actively promotes food sales to all guests within the licensed premises of the restaurant during all hours of operation except those times specifically exempted herein;

(4) Maintains a kitchen open for meal service, which is fully staffed and supplied with sufficient workers and food product for the menu in effect, during all hours of operation except those times specifically exempted herein. One or more bowling alleys maybe may be included in the licensed premises of a restaurant if table service is available throughout the licensed premises;

(q) Sale, sell, dispense or sold. All barbers and all manners or means of furnishing alcoholic beverages intoxicating liquor or 3.2 percent malt liquor for a consideration. Such term shall include all transactions, whether for cash, credit or other considerations and shall include transactions where the consideration for the alcoholic beverage is included or combined with another transaction or where the consideration is called a "donation" or used to purchase any ticket, token or other object redeemable for alcoholic beverages intoxicating liquor or 3.2 percent malt liquor;

(r) Security personnel. Any person licensed by the state as a protective agent or the employees of a protective agent providing protective agent services in compliance with state law, or persons licensed as peace officers by the state and employed by the city as police officers;

(s) Wholesaler. Any person engaged in the business of selling alcoholic beverages intoxicating liquor or 3.2 percent malt liquor to retail dealers;

(t) Wine. The product made from the normal alcoholic fermentation of grapes, including still wine, sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than sound, ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, perry, soju, and sake, in each instance containing not less than one-half of one percent nor more than 24 percent alcohol by volume for nonindustrial use. Wine does not include distilled spirits as defined by Minnesota Statutes, Chapter 340A.101, Subd. 9.

~~Sec. 8-14. Minors excluded from off sale premises.~~

It shall be the duty of the proprietor of any off sale intoxicating liquor establishment, and all employees thereof, to exclude from the licensed premises any person under 21 years of age unless accompanied by a parent or guardian or unless such person is employed by the establishment, and a breach of said duty shall constitute a misdemeanor. (Ord. No. 7327, 10-22-1962; Ord. No. 7994, 6-11-1973, ' 1; Ord. No. 8264, 9-20-1976, ' 1; Ord. No. 8645, 10-4-1982, ' 4; Ord. No. 8802, 8-14-1986, ' 1.)

Section 5. That Chapter 8, Section 8-16, of the Duluth City Code, 1959, as amended, is hereby amended as

follows:

Sec. 8-16. Operating standards.

- (a) All sales of ~~alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor shall be made in full view of the public;
- (b) Every room or other place where alcoholic beverages are sold at retail shall, during business hours, be illuminated at an intensity of not less than one foot candle at floor level, except that food or drink preparation areas shall comply with health department illumination standards;
- (c) All on sale establishments shall comply with all sanitary regulations of the department of health;
- (d) The proprietor of each on sale establishment shall post in a conspicuous place in the establishment the occupancy limit for the establishment as set forth in the State Fire Code. Under no circumstances shall a number of people in the establishment exceed the posted number.

Section 6. That Chapter 8, Sections 8-18 through 8-24, of the Duluth City Code, 1959, as amended, is hereby amended as follows:

Sec. 8-18. Same-- 3.2 percent malt liquor.

No sale of 3.2 percent malt liquor shall be made on any Sunday between the hours of 1:00 a.m. and 10:00 a.m. No sale shall be made between the hours of 1:00 a.m. and 8:00 a.m. on any weekday, Monday through Saturday inclusive.

Sales can be made at other times that are authorized by Minnesota Laws 2003, Chapter 126 (M.S.A. Sec. 340A.504) or its amendments or successor, provided that the seller has first obtained each required state permit and has paid required fees, and has applied for and obtained a late hours permit from the office of the city clerk and paid any fee due.

No owner or proprietor of any premises for which an on sale intoxicating liquor license has been granted shall directly or indirectly permit upon such premises the sale, dispensing or furnishing of 3.2 percent malt liquor at any time during Sunday unless ~~he has~~ they have a valid special Sunday license as provided for in Section 8-46 of the Duluth City Code, 1959, as amended.

Sec. 8-19. Hours for consumption, service, etc., of alcoholic beverages on sale licensed premises.

(a) On any licensed on sale premises, which does not hold a state permit and a late hours permit issued by the city which allows sales until 2:00 a.m., no person shall consume or furnish to another person any ~~alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor in that period from one hour after sales of ~~alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor on such premises are required by law to cease until the time at which sales of ~~alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor on such premises are next allowed by law to begin, except that in the case of premises holding a late hour entertainment license, no person shall consume or furnish to another person any alcoholic beverage from 30 minutes after sales of ~~alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor on such premises are required by law to cease until the time at which sales of alcoholic beverages on such premises are next allowed by law to begin; and except that in the case of premises holding a state permit and a late hours permit issued by the city which allows sales until 2:00 a.m., no person shall consume or furnish to another person any alcoholic beverage in that period from 30 minutes after sales of alcoholic beverages on such premises are required by law to cease until the time at which sale of ~~alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor on such premises are next allowed by law to begin;

(b) No person in charge of such licensed on sale premises shall allow another person to consume any ~~alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor on such premises in that period from one hour after sales of alcoholic beverages on such premises are required by law to cease until the time at which sales of ~~alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor on such premises are next allowed by law to begin;

(c) The person in charge of such on sale premises shall not allow ~~alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor in glasses, cups or containers used for drinking, or in opened and uncorked cans or bottles on such licensed premises during such times when consumption of ~~alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor on such premises is prohibited by this Section. For the purposes of this Section 8-19, open bottles of intoxicating liquor stored behind the bar with pouring spout stoppers shall be considered corked bottles;

(d) Notwithstanding any other provision of this Section 8-19, on any licensed on sale premises that is not covered by a valid late hour entertainment license, no person shall consume or furnish to another person any alcoholic beverage, nor shall the person in charge of the premises allow, nor shall any person possess, any ~~alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor in a glass, cup, or container used for drinking, or in open and uncorked cans or bottles after the time of 2:00 a.m., except as provided in subdivision (a) of this Section 8-19.

Sec. 8-20. Destruction of illegal devices; sale of unlicensed alcoholic beverages.

If the defendant in any criminal action shall be found guilty of manufacturing or selling ~~alcoholic beverages~~ intoxicating liquor without a proper license, all directions, formula and recipes designed, intended or used for the manufacture of ~~alcoholic beverages~~ intoxicating liquor in violation of law shall be destroyed by the chief of police or under his their direction. Any ~~alcoholic beverages~~ intoxicating liquor seized and other articles seized shall be forfeited to the city and sold to the highest bidder by the chief of police.

Before the sale of any still, shall take place, the same shall first be dismantled by the chief of police or under his their direction. No sale of any ~~alcoholic beverages~~ intoxicating liquor so seized shall be made to persons other than those holding a license under the terms of this Chapter. Proceeds of such sales shall be paid into the police pension fund organized pursuant to the laws of Minnesota, 1953, Chapter 91.

Sec. 8-21. Unlicensed sale, manufacture, etc., prohibited; exceptions.

No person, directly or indirectly, upon any pretense or by any device, shall manufacture, import, sell, exchange, barter, dispose of or keep for sale any ~~alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor without first having obtained a license therefor as prescribed in this Chapter; provided, that this Section shall not apply to manufacturers and wholesalers licensed by the liquor control commissioner of the state. Nothing in this Section shall prohibit the natural fermentation of fruit juices in the home for family use or the fermentation of malt beverages in the home if not prohibited or taxed by state or federal law.

Sec. 8-22. Alcoholic beverages prohibited in public places; exceptions.

(a) No owner, manager or person having control of any public place shall serve, permit to be served or permit any person to drink ~~alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor in such place unless such place has been duly issued an on sale or temporary on sale license;

(b) No person shall mix, prepare, serve or consume ~~alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor in any public place except a hotel, club, restaurant or other place licensed to sell on the premises; provided, however, that the ~~city council~~ chief administrative officer may, by ~~resolution~~ permit, ~~permit~~ allow for the serving and consumption of alcoholic beverages in public places in connection with special events and convention functions subject to whatever conditions it ~~are~~ deems ~~deemed~~ desirable to impose necessary and appropriate;

(c) No person shall consume or have ~~alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor in his their possession in any public place holding an on sale license unless such alcoholic beverages have been served to him them by the licensee or an employee of such licensee;

(d) Except as provided in paragraph (f) of this Section, no licensee, manager or employee of any place for which any on sale license has been issued shall allow any patron to leave the licensed premises with any drink or open container of ~~alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor;

(e) Except as provided in paragraph (f) of this Section, no person shall leave any on sale licensed premises with any drink or open container of ~~alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor;

(f) Managers and employees of a restaurant licensed to sell intoxicating liquor or wine at on-sale under this Chapter may permit a person purchasing a full bottle of wine in conjunction with the purchase of a meal to remove the bottle on leaving the licensed premises provided that the bottle has been opened and the contents partially consumed;

(g) No person shall, within or on any public street, sidewalk, avenue, alley, trail or skywalk:

(1) Possess an opened container which contains and alcoholic beverages intoxicating liquor or 3.2 percent malt liquor or an alcoholic beverages intoxicating liquor or 3.2 percent malt liquor container with the seal broken unless:

(A) An alcohol consumption permit has been issued for the area pursuant to Section 35-9(a)(4) or its successor; or

(B) An on sale license has been issued for the area pursuant to Chapter 8 of this Code; or

(C) The alcoholic beverages intoxicating liquor or 3.2 percent malt liquor container is contained in a second container, which second container is not made from any paper or cardboard product, has an inside volume of one cubic foot or more, is securely closed and is carried on the back, or in some other manner so that the carrier's hands cannot reach the alcoholic beverages intoxicating liquor or 3.2 percent malt liquor container inside it or otherwise allow for the alcoholic contents to be consumed publicly;

(2) Notwithstanding the foregoing, any person may possess an opened container of wine as authorized by Section 8-22(f), above, or its successor.

Sec. 8-23. Tampering, etc., with original packages prohibited.

No person holding any license issued under this Division, directly or through any agent, employee or other person, shall dilute, fill, refill or in any manner tamper with the contents of any original package or bottle so as to change its composition or alcoholic content while in such original package or bottle. Possession on the licensed premises by any licensee of any alcoholic beverages intoxicating liquor or 3.2 percent malt liquor in the original package or bottle differing in composition or alcoholic content from such alcoholic beverages intoxicating liquor or 3.2 percent malt liquor when received from the manufacturer or wholesaler from whom it was purchased shall be prima facie evidence that the contents of such original package or bottle has been diluted, changed or tampered with.

Sec. 8-24. Gambling devices, prostitution, etc., prohibited.

(a) Except as provided below, no licensee shall keep, possess, operate or permit the keeping, possession or operation of any roulette wheel, football boards or other sports score betting boards, slot machine, dice or other gambling device or apparatus designed to facilitate betting on the premises or in any room adjoining the licensed premises controlled by ~~him~~ them, permit any gambling therein, or permit the licensed premises or any room in the same or in any adjoining building, directly or indirectly under ~~his~~ their control, to be used as a resort for prostitutes or ~~other~~ disorderly persons;

(b) A charitable organization licensed by the state of Minnesota to conduct lawful gambling may conduct such gambling on premises for which an intoxicating or 3.2 malt liquor license has been issued. The operation of lawful gambling in establishments licensed to sell alcoholic beverages intoxicating liquor or 3.2 percent malt liquor shall be subject to the regulations set forth herein and no licensee or other person shall violate any of said regulations. In addition to criminal penalties, the city council shall disapprove of the issuance of any lawful gambling premises permit by the Minnesota gambling control board if the issuance would violate these regulations. The regulations are as follows:

(1) Only one organization may operate lawful gambling on each premises licensed to sell alcoholic beverages intoxicating liquor or 3.2 percent malt liquor. This limitation shall not apply to the Duluth Entertainment Convention Center;

(2) No licensee of a liquor establishment licensed pursuant to this Chapter shall accept lease payments in excess of any lawful limit;

(c) Minnesota state lottery tickets authorized by Minnesota Statutes, Chapter 349A, may be sold on

premises licensed to sell alcoholic beverages;

(d) Gambling equipment may be kept or operated and raffles conducted on licensed premises and adjoining rooms when the use of the gambling equipment is authorized by:

(1) A tribal ordinance in conformity with the Indian Gaming Regulatory Act, Public Law Number 100-497; or

(2) A tribal-state compact authorized under Minnesota Statutes, Section 3.9221.

Section 6. That Chapter 8, Sections 8-26 through 8-31, of the Duluth City Code, 1959, as amended, is hereby amended as follows:

Sec. 8-26. Sales to intoxicated persons prohibited.

No person shall sell, give, barter, furnish or dispose of in any manner, directly or indirectly, any ~~alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor, in any quantity, for any purpose whatsoever, to any obviously intoxicated person. The city council may revoke the license of any licensee convicted under this Section of selling any ~~alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor to an obviously intoxicated person. No obviously intoxicated person shall be permitted to remain on any premises licensed under this Division.

Sec. 8-27. Consumption by minors prohibited.

No person under 21 years of age shall:

(a) Consume any ~~alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor; or

(b) Have in his their possession any ~~alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor for the purpose of consumption by him them or by any other person under 21 years of age; or

(c) Have any ~~alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor present in his their body as evidence by observable symptoms or chemical tests.

It shall be an affirmative defense to a charge of violating this Section if only 3.2 percent malt liquor was consumed or possessed for the purpose of consumption and such consumption or possession was in the presence of the parent, parents or legal guardian of the person so charged.

Sec. 8-27.1. Minors excluded from off sale premises.

It shall be the duty of the proprietor of any off sale intoxicating liquor establishment, and all employees thereof, to exclude from the licensed premises any person under 21 years of age unless accompanied by a parent or guardian or unless such person is employed by the establishment, and a breach of said duty shall constitute a misdemeanor.

Sec. 8-28. Sales to minors prohibited.

No person shall sell, give, barter, furnish or dispose of in any manner, either directly or indirectly, any ~~alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor, in any quantity, for any purpose whatsoever, to any person under 21 years of age. The city council may revoke the license of any licensee convicted under this Section of selling any ~~alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor to any person under 21 years of age.

Sec. 8-29. Minors prohibited on licensed premises for purpose of purchasing, etc., ~~alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor.

No person under 21 years of age shall enter any premises licensed for the retail sale of ~~alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor for the purpose of purchasing or having served or delivered to him them any ~~alcoholic beverage~~ intoxicating liquor or 3.2 percent malt liquor. No person under 21 years of age shall consume any ~~alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor on premises

licensed for the retail sale of ~~alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor or purchase, attempt to purchase or have another purchase for ~~him~~ them any ~~alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor.

Sec. 8-29.5. Social host allowing consumption by minor.

(a) Purpose and findings. The city council intends to discourage underage possession and consumption of alcohol, even if done within the confines of a private residence, and intends to hold persons criminally responsible who host events or gatherings where persons under 21 years of age possess or consume alcohol regardless of whether the person hosting the event or gathering supplied the alcohol. Prohibiting underage consumption acts to protect underage persons, as well as the general public, from injuries related to alcohol consumption. A deterrent effect will be created by holding a person criminally responsible for hosting an event or gathering where underage possession or consumption occurs;

(b) Definitions. For purposes of this section, the following terms have the following meanings:

(1) Alcohol. Alcohol means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, whiskey, rum, brandy, gin, or any other distilled spirits including dilutions and mixtures thereof from whatever source or by whatever process produced;

(2) Event or gathering. Event or gathering means any group of three or more persons who have assembled or gathered together for a social occasion or other shared activity;

(3) Host. Host means to aid, conduct, allow, entertain, organize, supervise, control, or permit a gathering or event. Host does not include a landlord, mortgagee, hotel or motel owner or operator who has not actually participated in knowingly furnishing alcohol for an event or gathering;

(4) Parent. Parent means any persons having legal custody of a juvenile:

(A) As a natural, adoptive parent or stepparent;

(B) As a legal guardian; or

(C) As a person to whom legally custody has been given by order of the court;

(5) Person. Person means any individual, partnership, co-partnership, corporation, or any association of one or more individuals;

(6) Residence or premises. Residence or premises means any home, yard, farm, field, land, apartment, condominium, hotel or motel room, or other dwelling unit, or a hall or meeting room, part, or any other place of assembly, public or private, whether occupied on a temporary or permanent basis, whether occupied as a dwelling or specifically for a party or other social function, and whether owned, leased, rented, or used with or without permission or compensation;

(7) Underage person. Underage person is any individual under 21 years of age;

(c) Prohibited acts.

(1) It is unlawful for any person(s) to host or allow an event or gathering at any residence, premises, or on any other private or public property where ~~alcohol or alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor are present, and when the person knows, or reasonably should know, that an underage person will, or does, consume any ~~alcohol or alcoholic beverage~~ intoxicating liquor or 3.2 percent malt liquor or possess any ~~alcohol or alcoholic beverage~~ intoxicating liquor or 3.2 percent malt liquor with the intent to consume it, and the person fails to take reasonable steps to prevent possession or consumption by the underage person;

(2) A person is criminally responsible for violating this Section if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures another to commit the prohibited act;

(3) A person who hosts an event or gathering need not be present at the event or gathering to be criminally responsible for a violation of this Section;

(d) Exceptions.

(1) This ordinance does not apply to conduct solely between an underage person and ~~his or her~~ their parents while present in the parent's household;

(2) This ordinance does not apply to legally protected religious observances;

(3) This ordinance does not apply to licensed retail sellers of intoxicating liquor or 3.2 percent malt liquor, or bottle club permit holders, who are regulated by Minn. Stat. Chapter 340A, or Duluth City Code Chapter 8;

- (4) This ordinance does not apply to situations where underage persons are lawfully in possession of ~~alcohol or alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor during the course and scope of employment;
- (5) This ordinance does not apply to medical procedures or treatment authorized by a physician, nor to law enforcement activities supervised by a law enforcement agency;
- (e) Enforcement. This ordinance can be enforced by any police or peace officer of the state;
- (f) Penalty. Violation of this Section is punishable as set out in Section 1-7.

Sec. 8-30. Proof of age. Misrepresentation of age.

- (a) Any person who may appear to the licensee or the licensee's employees or agents to be under twenty-one (21) years of age shall, upon demand of the licensee or the licensee's employees or agents, produce and permit to be examined appropriate identification as provided for by applicable state statutes.
- (b) No person shall misrepresent or misstate his ~~their~~ age or the age of any other person for the purpose of inducing any licensee or any employee of any licensee to sell, serve or deliver any ~~alcoholic beverage~~ intoxicating liquor or 3.2 percent malt liquor to any person under 21 years of age, or for the purpose of inducing any licensee or any employee of any licensee to allow, suffer or permit any person under 21 years of age to be, remain or loiter in or upon premises for which an on sale license has been issued.
- (c) This section does not apply to any person who, in cooperation with a law enforcement agency, is taking part in a compliance check or any other activity intended to determine whether a licensee is in compliance with the requirements of this chapter.

Sec. 8-31. Employment of minors prohibited; exception.

No establishment having an on sale license shall employ any person under 18 years of age in any of the rooms constituting the place in which ~~alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor are sold, except that persons under 18 years of age may be employed as musicians or to perform the duties of a bus boy or dishwashing services in hotels and restaurants serving food in room where ~~alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor are sold, provided that no such person under 18 years of age shall be permitted to perform any services behind a bar.

Section 7. That Chapter 8, Sections 8-33 through 8-35, of the Duluth City Code, 1959, as amended, is hereby amended as follows:

Sec. 8-33. Change to be made in cash.

In any retail cash transaction for the purchase of ~~alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor, only cash shall be returned to the patron in change.

Sec. 8-34. Licensee to maintain order on premises.

Every licensee shall be responsible for the conduct of his ~~their~~ place of business and the conditions of sobriety and order therein. Any violation of this Chapter committed on the licensed premises by an employee of the licensee shall be deemed the act of the licensee as well as the employee. The licensee shall be deemed to have knowledge of any gambling or prostitution occurring on the licensed premises.

Sec. 8-35. Licensee personally liable for unauthorized sales.

Any sale of ~~alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor in or from any place licensed under this Article by any clerk, barkeeper or other employee in such place shall be deemed the act of the employer and the local managing agent as well as that of the person actually making the sale. Such employer and local managing agent shall be liable for all the penalties provided by this Code for such sale

equally with the person actually making the sale.

Section 8. That Chapter 8, Sections 8-40 through 8-44, of the Duluth City Code, 1959, as amended, is hereby amended as follows:

Sec. 8-40. Dancing and late hours entertainment licenses for liquor establishments.

- (a) No person licensed to sell ~~alcoholic~~ intoxicating liquor or 3.2 malt liquor beverages on sale shall allow dancing participated in by the public or late hours entertainment on the licensed premises unless a license has been issued pursuant to this Section;
- (b) A dance license, whether an annual, seasonal or a one day license, shall entitle the on sale licensee to have dancing participated in by the public on the licensed premises;
- (1) Notwithstanding any provision of this Section or Chapter to the contrary, clubs and congressionally chartered veterans organizations that are open only to members and bona fide guests of members may have dancing participated in by members and guests, without securing a dance license;
- (2) The term of the annual dance license shall be the same as the term of the on sale license. The term of the seasonal license is limited to the months of May through August;
- (3) The fee for any dance license shall be set in accordance with Section 8-56(d). The fee for the annual license shall be prorated in the same manner as on sale licenses;
- (4) The procedures and standards applicable to the issuance of the late hours entertainment license, where applicable, shall apply to the issuance of the annual or seasonal dance license;
- (5) The city clerk is authorized to issue the one day dance license. The following procedures and standards are applicable to the issuance of the one day dance license:
- (A) No license shall be issued unless an application for the license is received by the city clerk at least 60 days prior to the event date;
- (B) The license is subject to approval by the police and fire departments. Such approval is subject to, but not limited to, the following standards:
1. No license shall be issued in an area or under circumstances that would result in the disturbance of adjoining properties or the surrounding neighborhood;
 2. The police and fire departments shall apply the same considerations applicable to the late hours entertainment license;
 3. The license may contain conditions and limitations concerning security for the event and the hours during which the dancing event may be held; however, the license shall not authorize dancing after the time authorized for the sale of ~~alcohol~~ intoxicating liquor or 3.2 percent malt liquor;
 4. The city clerk shall notify the licensee in writing of the action taken on the application by any reasonable means, including but not limited to, the United States mail or electronic transmission. The licensee may appeal the action of the city clerk to the alcohol, gambling and tobacco commission. The appeal is subject to the following procedures:
 - (i) The appeal shall be made in writing within seven days after written notice of the action is issued, on a form provided by the city clerk, and filed with the city clerk. The appeal shall be accompanied by an appeal fee which shall be established by the city council pursuant to Section 31-6(a). The issues on appeal shall be limited to the issues presented in the written appeal;
 - (ii) In deciding the appeal the commission shall apply the same criteria required of the city clerk;
 - (iii) The decision of the commission shall be the final decision of the city subject to appeal to the Minnesota Court of Appeals pursuant to Minnesota Statutes Section 606.01;
 - (iv) The failure of the applicant to submit an application sufficiently in advance of the proposed dance event to allow for an appeal is the sole responsibility of the applicant;
- (c) Notwithstanding any provision of this Section or Chapter to the contrary, late hours entertainment licenses may be issued to establishments holding on sale intoxicating liquor licenses or 3.2 malt liquor beverages if they meet the criteria set forth in Section 8-40(d). The late hours entertainment license shall allow the establishment to have music and entertainment, including dancing by patrons, after the hours when sales

of alcoholic beverages intoxicating liquor or 3.2 percent malt liquor are required to cease. The fee for such license shall be set in accordance with Section 8-56(d);

(d) The annual and seasonal dance license and the late hours entertainment license shall be subject to the following procedures and standards:

(1) Every application shall be investigated by the police and fire departments and alcohol, gambling and tobacco commission;

(2) No license shall be issued in an area or under circumstances where the dancing or late hours entertainment would disturb adjoining properties or the surrounding neighborhood;

(3) In their investigation and recommendations, the police and fire departments and the alcohol, gambling and tobacco commission shall consider, without limitation:

(A) The proximity of the establishment to residences and residentially zoned property;

(B) The character of the neighborhood surrounding the establishment;

(C) Parking facilities at the establishment;

(D) The acoustic properties of the building housing the establishment;

(E) The past record of the establishment; and

(F) Any past complaints from adjoining property owners;

(4) The license may contain conditions and limitations concerning types of entertainment and hours of entertainment or dancing;

(5) No entertainment or dancing shall be allowed after 3:00 a.m.;

(6) All establishments allowing late hours dancing must have a dancing license as required by paragraphs (a) and (d) of this Section;

(7) During all times when dancing or late hours entertainment is conducted on the licensed premise the licensee shall provide adequate security personnel. The chief of police shall approve the security personnel plan. The licensee is responsible for all fees or expenses of such security personnel.

Sec. 8-41. Types generally.

(a) With respect to intoxicating liquor, there shall be the following types of licenses: on sale, on sale club, on sale wine, on sale culinary class, on sale theater, on sale brewer taproom, on sale microdistillery cocktail room, temporary on sale, ~~on-sale winery~~, off sale, microdistillery off sale, ~~winery off sale~~, and a brewery malt liquor off sale;

(b) On sale licenses authorize the licensee to sell intoxicating liquor at retail for consumption only on the licensed premises. The following additional requirements apply to specific types of on sale licenses:

(1) On sale culinary class licenses authorize on sales subject to the restrictions of Section 8-44 (d) of this Chapter and Minnesota Statutes Section 340A.4041, or its successor;

(2) On sale theater licenses authorize on sales each day of the week to persons attending events at the theater;

(3) On sale brewer taproom licenses authorize on sales of malt liquor produced by the brewer for consumption on the premises of or adjacent to one brewery location owned by the brewer, subject to the restrictions of this Chapter and Minnesota Statutes Section 340A.301, subd. 6(b), or its successor. Notwithstanding Section 8-17 of this Chapter or Minnesota Statutes Section 340A.504, subdivision 3, a taproom may be open and may conduct on sale business on Sundays if authorized by the city in the license. All Sunday sales are subject to the limitation on hours of sale provided in Section 8-46 of this Chapter;

(4) On sale microdistillery cocktail room licenses authorize on sales of distilled liquor produced by the distiller for consumption on the premises of or adjacent to one distillery location owned by the distiller subject to the restrictions of Section 8-44(h) of this Chapter and Minnesota Section 340A.22 or its successor;

(5) Temporary on sale licenses authorize temporary on sales in connection with a social event sponsored by the licensee and only at the designated licensed premise

~~(6) On sale winery licenses authorize on sales of wine produced by the winemaker for consumption on the premises of or adjacent to one winery location owned by the winemaker subject to the restrictions of this chapter.~~

(c) Except as provided herein, off sale licenses authorize the licensee to sell intoxicating liquor at retail in original packages only for consumption off the licensed premises. The following additional requirements

apply to specific types of off sale licenses:

(1) Brewery malt liquor licenses permit breweries holding on sale licenses, or breweries that manufacture fewer than 3,500 barrels of malt liquor in a year, to sell malt liquor off sale in 64-ounce containers commonly known as growlers, subject to the restrictions in Minnesota Statutes, Section 340A.301, subd. 7(b), or its successor, and this Chapter. Sale of malt liquor off sale in 64-ounce containers, commonly known as growlers, may be conducted on Sundays. All Sunday sales are subject to the limitation on hours of sale provided in Section 8-46 of this Chapter;

(2) Notwithstanding the provisions of sections 8-21 and 8-22 of this Chapter, it shall be lawful for the holder of an off sale intoxicating liquor license, a winery off sale license, or a brewery malt liquor off sale license to provide samples as provided in Minnesota Statutes, Section 340A.510, or its successor;

(3) A microdistillery off sale license permits a microdistillery to sell product manufactured on-site, subject to the restrictions of Section 8-17 of this Chapter and Minnesota Statute, Section 340A.22 Subd. 3, or its successor;

(4) A winery off sale license permits a winery to sell products manufactured on-site, subject to the restrictions of this chapter.

(d) With respect to 3.2 percent malt liquor, there shall be three types of licenses: on sale, off sale and temporary on sale. Each type of 3.2 percent malt liquor license authorizes the licensee to sell 3.2 percent malt liquor subject to the following additional requirements applicable to the specific type of license:

(1) On sale licenses authorize the sale of 3.2 percent malt liquor at retail for consumption only on the licensed premises;

(2) Off sale licenses authorize the sale of 3.2 percent malt liquor at retail in original packages for consumption only off the licensed premises;

(3) Temporary on sale licenses authorize the sale of 3.2 percent malt liquor at retail for a limited period of time, and only at the designated licensed premise;

(e) No alcoholic beverage intoxicating liquor or 3.2 percent malt liquor license of any type shall be granted to any employee holding a position in the classified service of the city and working as a licensed peace officer in the police department, to any police chief, deputy chief of police, fire chief, deputy fire chief, fire marshal or deputy fire marshal, nor shall any such officer or employee engage in the business, be employed by an establishment licensed by the city, or have an ownership interest in such business licensed by the city.

Sec. 8-42. Issuance or transfer of an on sale license; application procedure; limitation on issuance of inactive licenses.; false statements in application prohibited.

(a) Whenever there shall be filed with the city clerk an application for the issuance of an on sale alcoholic beverages intoxicating liquor or 3.2 percent malt liquor license or for a transfer thereof, the fire marshal and the St. Louis County health department shall proceed to inspect and examine such premises and make a report to the alcohol, gambling and tobacco commission as to whether such premises show substantial compliance with the requirements of this Chapter and other applicable laws. The police department shall investigate the applicant and report whether the applicant is a proper person to receive such license. In the event such reports and any supplementary assurances indicate the building will comply with the requirements of laws relating to on sale alcoholic beverage intoxicating liquor or 3.2 percent malt liquor licenses, including building, fire and health codes, a license may be granted, which shall be held by the city clerk until completion of the proposed premises. Thereafter, a final inspection and report shall be made by each of such officers and if their reports indicate that the premises meet the requirements of all applicable laws and are otherwise suitable for the operation of the business permitted by such license, then the clerk shall physically deliver the license to the applicant. In the event that construction of the proposed premises is not prosecuted by the applicant with reasonable diligence, or in the event the building, when completed, does not comply with the requirements above set forth, the council may revoke such license as provided for in this Chapter;

(b) No alcoholic beverage intoxicating liquor or 3.2 percent malt liquor license may be renewed if the licensee has not made sales authorized by the license at any time during the one-year period immediately prior to the date of renewal;

(c) Within 30 days of a change in managers or local managing agents by a license holder, the license holder shall provide written notice of such change to the city clerk on the form required by the city. The failure of any license holder to comply with the provisions of this paragraph shall be grounds for the revocation of all alcoholic beverage intoxicating liquor or 3.2 percent malt liquor licenses held by such license holder. This paragraph shall take effect on September 1, 2008.

(d) No person shall make any material false statement in any written application, or operate the business in a manner other than as described in the application, and in addition to all other penalties, his or her license shall be revoked by the city council for a violation of this section after notice to the licensee and hearing, and an opportunity of the licensee to be heard.

Sec. 8-43. Consumption and display permits.

(a) The city may approve the issuance of a permit under this Section only to:

(1) An applicant who has not, within five years prior to the application, been convicted of a felony or of violating any provision of this Chapter, or Minnesota Statutes Chapter 340A or rule adopted under such chapter;

(2) A restaurant;

(3) A hotel;

(4) An establishment licensed for the sale of 3.2 percent malt liquor;

(5) A club as defined in Section 8-13(d); and

(6) A bed and breakfast establishment as defined in Section 8-13(c);

A club holding an on sale intoxicating liquor license is not eligible for a permit under this Section;

(b) No administrative officer of the city shall grant approval for issuance of any annual consumption and display permit by the liquor control commissioner of the state of Minnesota unless the city council has authorized such approval by resolution after investigation and recommendation regarding such permit application has been made by the alcohol, gambling and tobacco commission pursuant to the procedures set forth in Section 8-7 of this Chapter;

(c) The permit holder shall pay a fee, which shall be set in accordance with Section 31-6(a) of this Code, annually to the city in addition to any fee paid to the state. The fee payable to the city shall be paid prior to the beginning of operation and prior to April 1 of the following and each succeeding year;

(d) The provisions and regulations of sections 8-15, 8-16, 8-17, 8-18, 8-19, 8-24, 8-26, 8-28, 8-34 and 8-35 shall fully and equally apply and regulate establishments holding a consumption and display permit from the Minnesota state liquor control commissioner;

(e) The city clerk, subject to the requirements of Minnesota law, may issue a one day permit for the consumption and display of intoxicating liquor to a nonprofit organization in conjunction with a social activity in the city sponsored by the organization;

(f) A permit issued pursuant to this Section permits the consumption and display of intoxicating liquor on the premises. The permit does not authorize the sale of intoxicating liquor.

Sec. 8-44. To whom licenses issued--intoxicating liquor.

(a) On sale intoxicating liquor licenses may only be granted to establishments that are used exclusively for the retail sale of intoxicating liquor, cigars, cigarettes, ice, all forms of tobacco, 3.2 percent malt liquor and soft drinks and to hotels, clubs, restaurants and bowling alleys;

(b) On sale club licenses may only be granted, subject to the approval of the commissioner of public safety, to clubs or to congressionally chartered veterans organizations which have been in existence for three years or more. Such license shall authorize the sale of intoxicating liquors only to members of the licensed organization and their bona fide guests;

(c) On sale wine licenses may be granted to restaurants or bed and breakfast establishments and shall authorize licensees on every day of the week to sell wine and fortified wine not exceeding 14 24 percent alcohol by volume, for consumption on the licensed premises only, in conjunction with the sale of food. A bed and breakfast establishment may furnish wine and fortified wine only to registered guests of the establishment and, if the facility contains a licensed commercial kitchen, also to guests attending private events at the facility

if such events are otherwise authorized by Chapter 50 of this Code. Sunday hours of sale shall be from Noon to 1:00 a.m. Monday. No on sale wine license shall be in effect until it is approved by the liquor control commissioner of the state of Minnesota;

(d) On sale culinary class licenses may only be granted to business establishments that meet the following conditions:

(1) The business establishment is not otherwise eligible for an on sale intoxicating liquor license; and

(2) That, as a regular part of its business the establishment conducts culinary or cooking classes for which payment is made by each participant and only if such participant has made an advance reservation.

The license authorizes the licensee to furnish to each participant in each class, at no additional cost to the participant, up to a maximum of six ounces of wine or 12 ounces of intoxicating malt liquor, during and as part of the class, for consumption on the licensed premises only;

(e) Temporary on sale liquor licenses may be issued in connection with a social event sponsored by the licensee. The license may only be issued to:

(1) Clubs, charitable organizations, religious organizations and other nonprofit organizations in existence for at least three years;

(2) A registered political committee;

(3) A state university;

(4) A brewer who manufactures fewer than 3,500 barrels of malt liquor in a year; ~~or~~

(5) A microdistillery; or

(6) A winery.

A temporary license may only be issued for a limited length of time, not to exceed four consecutive days. Temporary on sale licenses to any one organization or for one location shall not exceed more than three four-day, four three-day, six two-day or 12 one-day licenses, in any combination not to exceed 12 days per year. No more than one license shall be issued to any one organization or for any one location within any 30 day period unless the licenses are issued in connection with an event officially designated a community festival by the city. The city may authorize the temporary on sale liquor license on premises other than premises the licensee owns or permanently occupies. The license may provide that the licensee may contract for intoxicating liquor catering services with the holder of a full-year on sale intoxicating liquor license used by the city;

(f) Off sale intoxicating liquor licenses may only be granted to exclusive liquor stores;

(g) Brewery malt liquor off sale licenses may only be granted to:

(1) Breweries holding on sale licenses; or

(2) A brewer who manufactures fewer than 3,500 barrels of malt liquor in a year, and shall be subject to all restrictions, terms and conditions contained in Minnesota Statutes, Section 340A.301, subd. 7(b), or its successor;

(h) Microdistillery cocktail room licenses may only be granted to microdistilleries licensed under Minnesota Statutes Section 340A.301, subdivision 6c or its successor;

(i) Microdistillery off sale licenses may only be granted to microdistilleries licensed under Minnesota Statutes Section 340A.301, subdivision 6c or its successor;

~~(j) Winery off sale licenses may only be granted to wineries licensed under Minnesota Statutes Section 340A.301~~

Section 9. That Chapter 8, Section 8-48, of the Duluth City Code, 1959, as amended, is hereby amended as follows:

Sec. 8-48. Same--same--Spirit Mountain recreation area.

(a) That license issued under authority of Laws 1974, Chapter 345, shall be issued for use at one or more locations within the boundaries of the Spirit Mountain recreation area, provided that any ~~alcoholic beverages~~ intoxicating liquor served shall be served by Spirit Mountain employees only;

(b) Such license shall be issued only to the Spirit Mountain recreation area authority. Notwithstanding

any provision of this Code to the contrary, the Spirit Mountain recreation area authority may lease the food and beverage operations to an independent contractor, provided, however, that said authority shall be responsible for the actions of any such independent contractor as provided in Sections 8-34 and 8-35 of this Chapter;

(c) The Spirit Mountain recreation area authority, when holding said license, shall maintain a liquor liability insurance policy as required by Minnesota Statutes, Chapter 340A, which names said authority and the city of Duluth as insured parties under such policy. Such policy shall be kept on file by said authority in the office of the city clerk of the city of Duluth and shall contain a provision requiring that written notice be delivered to the city of Duluth not less than ten days prior to the termination of such policy;

(d) The fee for such license shall be that fee established by Section 8-56 of this Chapter;

(e) Said license shall be treated as an on sale intoxicating liquor license under the provision of this Chapter;

(f) All other provisions of this Chapter shall be applicable to said license and to said authority except as they are inconsistent with the provisions of this Section.

Section 10. That Chapter 8, Section 8-54 through 8-56, of the Duluth City Code, 1959, as amended, is hereby amended as follows:

Sec. 8-54. License not effective beyond space for which granted; exceptions--sidewalk use permit.

(a) Licensed premises. No license shall be effective beyond the compact and contiguous space named therein for which the same was granted. In addition, the following standards and procedures apply:

(1) If any part of the serving area of the licensed premises is outside of a fully enclosed building, that part must comply with all the conditions set out in Section 8-54(b) or (c) or (d) that apply to the area;

(2) At the time of application or at any time an outdoor area is licensed, its operation is subject to the power of the chief of police to approve the operation, set hours of operation, set days of operation, based upon an administration review and application of uniform regulatory criteria established by the police department, which pertains to public safety, convenience, compliance with laws, neighborhood conditions, noise, parking and health;

(3) Licensed premises shall include the entire parcel of land on which the establishment is located; however, no sales or service shall take place outside the designated serving areas approved by the city council in the licensing procedure unless such sales and/or service is authorized on a temporary basis for a special event by city council resolution and shall be subject to any conditions and limitations the council deems appropriate;

(4) Before any temporary service area is authorized, the licensee shall make application to the city clerk. The application shall include the following:

(A) Payment of the appropriate fee;

(B) A diagram of the proposed area;

(C) Specification of the time and date of the event; and

(D) Fencing, signage and security measures proposed to be taken;

(5) The alcohol, gambling and tobacco commission shall review the application for temporary service area and make any recommendation(s) it deems appropriate to the city council;

(6) The fee for temporary expansions shall be set in accordance with Section 31-6(a) of this Code for the first day of the event and for each day thereafter. If the application is denied, all but a portion of the fee, set in accordance with Section 31-6(a) of this Code, shall be refunded to the applicant;

(7) No temporary expansion of service area shall be granted for a period of time greater than three consecutive days;

(b) Sidewalk use permit for licensed premises. The licensed premise shall not include those areas of the business premise for which a sidewalk use permit has been issued pursuant to Section 50-37.12 unless the licensee complies with the following:

(1) The area may be part of the licensed premises only if no privately-owned property is reasonably available to the licensee that could be used, instead, as an outdoor licensed premises;

(2) The licensee has a food and beverage service establishment license under M.S.A. Sec. 157.16, subd. 3(d)(3)(i) or (ii), or subd. 3(d)(4) and subd. 3(d)(6) or (7), and whatever food service is available

anywhere else in the licensed premises is available in the permitted area;

(3) No ~~alcoholic beverage intoxicating liquor or 3.2 percent malt liquor~~ can be served, consumed or possessed in the permitted area by any person unless ~~he or she is~~ they are seated at a table;

(4) The permitted area shall not exceed 500 square feet in area, must have an impervious surface, must, when in use, have an approved continuous perimeter barrier or fence. The fence must be approved by the police chief and the building official as meeting administrative criteria as to safety, security, regulated access and restricted means to transfer ~~alcoholic beverages intoxicating liquor or 3.2 percent malt liquor~~ on or off the premises. The design, appearance, lighting, decoration, signage and use of the facility shall be reasonably compatible with the surrounding area, as determined by the land use supervisor;

(5) The permitted area shall be capable of being constantly observed by serving or security personnel of the licensee. Licensee shall furnish a minimum staff of one person for a permitted area of up to 20 patron capacity and one additional staff for each additional unit of up to 20 patron capacity;

(6) The permitted area shall leave at least a six foot wide area of sidewalk that is not subject to the sidewalk use permit;

(c) Licensed premises outdoors on private property. If any part of the licensed premises is on privately-owned property that is not subject to an ownership or easement interest of the city of Duluth, or any other government, and that part of the licensed premises is not an indoor area as defined in M.S.A. Sec. 144.413, subd. 1(a), or its successor, then the use of that part of the licensed premises shall comply with all of the following:

(1) Any condition or limitation imposed by any law, ordinance, government regulation, code, license or permit, including restrictions on configuration or use that are set by the city council by ordinance or resolution;

(2) That part of the licensed premises shall not exceed in area the area of the rest of serving area of the licensed premises;

(3) ~~(2)~~ That part of the licensed premises shall have an improved surface suitable for all weather pedestrian traffic, must, when in use, have a continuous perimeter barrier or fence. The barrier or fence must be approved by city clerk, police chief and the building official as meeting administrative criteria as to safety, security, regulated access and restricted means to transfer alcoholic beverages on or off the premises. The appearance, lighting, signage, visual barriers of the facility shall be reasonably compatible with the surrounding area, as determined by the chief administrative officer or ~~his/her~~ their designee;

(4) ~~(3)~~ Any food service available anywhere in the licensed premises shall be available in that part of the licensed premises. Every type of seating for dining anywhere on the licensed premises shall be available on that part of the licensed premises. In that part of the licensed premises, no ~~alcoholic beverage intoxicating liquor or 3.2 percent malt liquor~~ shall be served, consumed or possessed by any person unless ~~he or she is~~ they are seated at a table;

(d) Pre-existing uses. Outdoor areas that were included in a licensed premises on January 1, 2008, shall be allowed to continue as a nonconforming use under, and subject to, Section 50-38, to remain in the same configuration and subject to the same restrictions of use, including hours of operation, as existed at that date, subject, however, at all times to the government's police power to control a license and sanction activities at establishments that dispense alcoholic beverages, as provided by any law, including (a) above.

Sec. 8-55. Duration; expiration date; prorating of certain licenses.

Except as herein otherwise expressly provided, all ~~alcoholic beverage intoxicating liquor or 3.2 percent malt liquor~~ licenses shall be issued for a period of one year; except, that for the purpose of coordinating the time of expiration of licenses in general, such licenses may be issued for a shorter time, and when thus issued the fees therefor shall be prorated; provided, that fees for off sale 3.2 percent malt liquor licenses shall not be prorated. All licenses for intoxicating liquor ~~or 3.2 percent malt liquor~~ shall expire on the 31st day of August each year next succeeding the issuance of such license; and all licenses for ~~3.2 percent malt liquor~~ shall expire on the 30th day of April each year next succeeding the issuance of such license. This Section shall not apply to temporary on sale 3.2 percent malt liquor licenses.

Sec. 8-56. Fees.

- (a) The license fee for off sale and on sale 3.2 percent malt liquor licenses shall be paid to the city clerk not later than March 15 of each year;
- (b) The license fee for off sale intoxicating liquor licenses shall be paid to the city clerk not later than July 15 of each year;
- (c) The license fee for on sale intoxicating liquor licenses may, at the option of the licensed applicant, be paid to the city clerk either in one lump sum not later than July 15 in each year, or in four equal installments, which shall be paid not later than July 15, October 15, January 15 and April 15, respectively;
- (d) In any case where any payment for any alcoholic beverage intoxicating liquor or 3.2 percent malt liquor license is not made when due, a penalty fee, which shall be set in accordance with Section 31-6(a) of this Code, shall be added to the fee. In any case where any payment for any alcoholic beverage intoxicating liquor or 3.2 percent malt liquor license is more than 30 days in arrears, an additional penalty fee which is double the base penalty fee shall be added to the fee. In any case where any payment for any intoxicating liquor or 3.2 percent malt liquor license is not made when due, said license shall be suspended indefinitely until payment is made, including any applicable penalty fee. Nonpayment of fees shall constitute good cause for suspension or revocation of any license;
- (e) Payment for license fees shall be made by certified check payable to the city treasurer of the city or in lawful money of the United States of America and when such fees are received by the city clerk they shall be transmitted to the city treasurer. Upon the granting of a license as provided in this Article the amount of fee for such license shall be paid into the general fund;
- (f) Whenever any licensee holding an on sale intoxicating liquor license shall at any time for any purpose operate more than one permanent bar, such licensee shall pay an additional annual license fee, which shall be set in accordance with Section 8-56(g), for each such additional permanent bar. A so-called service bar which is used solely by employees of the licensee shall not be considered a bar for purposes of this Section;
- (g) The annual fees for all licenses and permits provided for in this Chapter shall be set in accordance with Section 31-6(a) of this Code.

Section 10. That Chapter 8, Section 8-61, of the Duluth City Code, 1959, as amended, is hereby amended as follows:

Sec. 8-61. Liability insurance.

- (a) No license applicant who is required by the provisions of Minnesota Statutes, Section 340A.409, to provide proof of financial responsibility with regard to liability imposed by Minnesota Statutes, Section 340A.801, shall be granted a license under this Chapter until ~~he has~~ they have provided proof of financial responsibility in the manner prescribed by statute.
- (b) The licensee shall at all times keep in full force and effect insurance required by Minnesota Statutes 340A.409, and any failure at any time so to do shall be grounds for immediate revocation of the license.

Section 11. That Chapter 8, Sections 8-63 and 8-64, of the Duluth City Code, 1959, as amended, is hereby amended as follows:

Sec. 8-63. Same--Corporations.

- (a) Alcoholic beverage Intoxicating liquor or 3.2 percent malt liquor licenses may be issued to any corporation authorized to do business in the state of Minnesota if an officer or a managing agent of the corporation ~~is a resident of Minnesota residing~~ resides within 50 miles of the Duluth City Hall;
- (b) No corporation shall be granted a license to sell alcoholic beverages intoxicating liquor or 3.2 percent malt liquor if any of its officers, directors, shareholders, local managers or local managing agents have been convicted within five years prior to the application for such license for violation of any law relating to the manufacture, sale, distribution or possession of alcoholic beverages intoxicating liquor or 3.2 percent malt liquor, or have had an interest in a license to sell alcoholic beverages which was revoked within the last five

years for violation of any such law, or for cause, and unless such officers, directors, shareholders, local managers and local managing agents are of good moral character and reputation. This paragraph shall not apply to clubs, or to corporations whose stock is publicly held and listed and traded by the public on a recognized stock exchange, except with respect to those provisions dealing with local managers and local managing agents;

(c) A corporation shall state in its application for an alcoholic beverage intoxicating liquor or 3.2 percent malt liquor license the names of its shareholders, directors, officers, local managers and local managing agents. The transfer, sale, pledge or assignment of the record or equitable ownership of any stock of a corporate license holder to new or different shareholders by a corporate license holder shall be deemed a transfer of all alcoholic beverage intoxicating liquor or 3.2 percent malt liquor licenses held by such corporation and, in such case, the provisions of Section 8-67 of this Code, shall be applicable. The failure of any corporate license holder to comply with the provisions of this paragraph shall be grounds for the revocation of all alcoholic beverage intoxicating liquor or 3.2 percent malt liquor licenses held by such corporation. This paragraph shall not apply to clubs, or to corporations whose stock is publicly held and listed and traded by the public on a recognized stock exchange.

Sec. 8-64. Same--Prohibited to certain persons.

No licenses required by this division shall be issued to any person not a citizen of the United States or not of good moral character and repute, nor to any person under 19 years of age, nor to any person who shall be convicted of any willful violation of any law of the United States, this state or any local ordinance with regard to the manufacture, sale, distribution or possession of alcoholic beverage intoxicating liquor or 3.2 percent malt liquor, nor to any person whose license under this division shall be revoked for any willful violation of any such laws or ordinances or for cause.

Section 12. That Chapter 8, Sections 8-68 and 8-69, of the Duluth City Code, 1959, as amended, is hereby amended as follows:

Sec. 8-68. Licenses not to be issued in certain areas.

(a) Except for the district from Third Avenue East to Seventh Avenue East on Fourth Street; from Sixth Avenue West to Third Avenue East on Michigan Street, Superior Street and First Street; on London Road west of 26th Avenue East; on Central Entrance east of Basswood Avenue, and except for clubs and general food stores, no licenses shall be granted to authorize the sale of alcoholic beverages intoxicating liquor or 3.2 percent malt liquor in any establishment, the main entrance of which is situated within 400 feet of the main entrance of any church or of the grounds of any public or private elementary or secondary school; said distance to be measured by the shortest route along or across the public way;

(b) Establishments in which the sale of alcoholic beverages was licensed on January 1, 1967, shall not be subject to the provisions of this Section. Establishments which exist at the time a church or school locates within 400 feet of the establishment may continue to operate and are eligible for license renewal and transfer unless the establishment's license is revoked for causes unrelated to this Section.

Sec. 8-69. Sale of alcoholic beverages at the St. Louis County Heritage and Arts Center.

Notwithstanding the provisions of Section 8-54 of this Chapter, on sale intoxicating liquor license holders in the city may sell intoxicating liquor at any convention, banquet, conference, meeting or social affair conducted on the premises of the St. Louis County Heritage and Arts Center when such licensee has been engaged by a person or organization authorized by the board of directors of the St. Louis County Heritage and Arts Center to use said premises for such event. Sales shall be made only to persons attending such event and shall be subject to all laws and ordinances governing the sale of intoxicating liquor which are not inconsistent with the Section. The form of the rental agreement used by the St. Louis County Heritage and Arts Center for events where alcoholic beverages intoxicating liquor or 3.2 percent malt liquor are sold shall be

approved by both the Duluth City Council and St. Louis County board and shall specify the time, date and area where ~~alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor are to be sold and consumed, any provisions made for security personnel at the event, and the name of the licensee catering the event. On or before the 20th day of any month the St. Louis County Heritage and Arts Center shall file with the Duluth City Council and St. Louis County board copies of all executed rental agreements for events in the following month where ~~alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor will be sold. The Duluth City Council or St. Louis County board may, by resolution passed before the end of the month, file an objection to any event where ~~alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor are sold. Such resolution shall state the specific grounds of the objections. No ~~alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor shall be sold at any event where an objecting resolution has been passed and no ~~alcoholic beverages~~ intoxicating liquor or 3.2 percent malt liquor shall be sold at any event where the rental agreement for such event has not been filed with the Duluth City Council and St. Louis County board as provided herein.

Sec. 8-70. Video games of chance in on sale establishments; declared a public nuisance.; ~~liquor licensing restrictions; prohibitions.~~

(a) Findings of fact. The city council hereby finds the following facts to exist:

- (1) Since 1984, the state of Minnesota has licensed video games of chance in on sale ~~intoxicating liquor establishments pursuant to Minnesota Statutes 349.50 to 349.60;~~
- (2) That the paying off of players of video games of chance has always been a criminal offense and is presently a gross misdemeanor;
- (3) The design of video games of chance and their location in taverns and private clubs makes the games particularly attractive to gamblers as opposed to recreational game players;
- (4) In Duluth video games of chance in on sale ~~intoxicating liquor establishments are used primarily for illegal gambling;~~
- (5) Policing unlawful gambling on video games of chance is exceedingly difficult because of the numbers of machines and locations and the personal relationship between the gamblers and the tavern or club operators;
- (6) Video games of chance in taverns and clubs constitute an unacceptable burden to local law enforcement resources;
- (a) The presence of video games of chance in any on sale liquor establishment in the city of Duluth constitutes a public nuisance;
- (b) The city council shall not issue, transfer or renew the liquor license of any on sale ~~intoxicating liquor establishment which has a video game of chance on its licensed premises after July 31, 1990, provided that this Section shall not apply to any liquor license issued at the Fond-du-Luth Gaming Casino;~~
- (c) No licensee or other person shall keep, maintain, operate or possess on any on sale licensed premises or bottle club any video game of chance, provided that this Section shall not apply to the Fond-du-Luth Gaming Casino.

Section 13. That this ordinance shall take effect 30 days after its passage and publication.

STATEMENT OF PURPOSE: This ordinance amends Chapter 8 of the Duluth City Code, 1959, as amended, to update the alcoholic beverage requirements. Changes to the Chapter include the following.

Definition updates: (1) The definition of wine has been updated to reflect the definitions contained in state law, including fortified wine and allowable alcohol by volume to 24 percent;

(2) The definition of restaurant has been revised to bring consistency with other municipalities and state health standard; and (3) The definition of licensed premises has been revised to provide that the licensed premises is the area licensed for sale, rather than the entire parcel of land on which the establishment is located.

Licensing terms: the renewal term for 3.2% malt liquor licensing has been amended to align with intoxicating liquor terms that run September 1 to August 31 to provide clarity for licensees and reduce administrative

burdens with duplicate processes.

Temporary expansions: (1) revises requirements for the amount of exterior space that is allowable for a temporary expansion to provide greater flexibility for businesses seeking to provide greater social distancing as a result of COVID-19; and (2) clarified the procedure for temporary expansions sought by establishments which also hold caterer's permits.

License penalties: (1) presumptive penalties have been revised to provide the Alcohol, Gambling, and Tobacco Commission with greater discretion in imposing penalties; (2) the grounds for suspension/revocation of a license have been clarified to include making false statements on applications, failure to maintain insurance, and refusing to cooperate with enforcement agencies; and (3) provides that late license payments can result in license suspension.

Technical and clerical changes include: (1) gendered pronouns replaced with gender-neutral pronouns; (2) sections have been reorganized to provide clarity; and (3) terminology has been updated for consistency and accuracy.

This ordinance has been submitted to the Alcohol, Gambling, and Tobacco Commission for their review and consideration at a special meeting scheduled for May 21, 2020.